

UNITED STATES DISTRICT COURT WESTERN DISTRICT OF
WASHINGTON AT SEATTLE

DENNY TALADAY, Personal Representative
of THE ESTATE OF ROSEMARY K.
TALADAY, and GARY TALADAY,

Plaintiffs,

v.

METROPOLITAN GROUP PROPERTY AND
CASUALTY INSURANCE COMPANY,

Defendant.

NO. CV 14-01290 JPD

PLAINTIFFS' MOTIONS IN LIMINE

**Note on Motion Calendar:
April 1, 2016**

I. INTRODUCTION

Plaintiffs respectfully requests that the Court grant the following six motions in limine. Defendant has communicated that it does not object to any of these motions in limine and will not oppose them. Defendant has chosen not to stipulate to motions in limine 1-5 because it believes they are simply re-stating existing law.

- 1. Exclusion of evidence and witnesses not disclosed in response to discovery requests, declarations, or depositions.**
- 2. Exclusion of witnesses not included in the Pretrial Order, with the exception of rebuttal witnesses that could not be anticipated prior to trial.**

- 1 **3. Exclusion of any arguments for a denial of coverage or partial denial of coverage**
2 **that have not yet been disclosed.**
- 3 **4. Exclusion of any affirmative defenses that have not yet been pled.**
- 4 **5. MetLife is bound by its prior stipulations and RFA (request for admission)**
5 **admissions concerning authenticity, receipt, and sending of documents.**
- 6 **6. Parties will provide each other with at least 24 hour notice of witnesses to be called at**
7 **trial.**

8 **II. ARGUMENT**

9 The following arguments supporting the motions in limine are abbreviated because the
10 motions are all unopposed.

- 11 **1. Exclusion of evidence and witnesses not disclosed in response to discovery requests,**
12 **declarations, or depositions.**

13 It is well-settled that “trial by ambush” is no longer an accepted litigation tactic. The
14 parties have had ample time to investigate this matter and locate all necessary witnesses and
15 exhibits. There is no reason that any last-minute witnesses or evidence should be allowed.
16 Defendant does not oppose this motion and Plaintiffs believe there is value to confirming this rule
17 through an explicit order.

- 18 **2. Exclusion of witnesses not included in the Pretrial Order, with the exception of**
19 **rebuttal witnesses that could not be anticipated prior to trial.**

20 The events of this lawsuit have occurred over the course of more than two years and the
21 parties have disclosed numerous witnesses who are not likely to be called at trial. It will benefit
22 both parties, and the Court, to know which witnesses will testify. There is no reason for the
23 parties to bring surprise witnesses that are not listed in the Pretrial Order. Defendant does not
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1 oppose this motion and Plaintiffs believe there is value to confirming this rule through an explicit
2 order.

3 **3. Exclusion of any arguments for a denial of coverage or partial denial of coverage**
4 **that have not yet been disclosed.**

5 Insurers are required to promptly communicate all coverage decisions, including partial
6 denials of coverage. WAC 284-30-330(13) and WAC 284-30-380(1-3) require an insurer to
7 provide written notice of its coverage decisions and promptly provide a reasonable explanation
8 when it denies coverage. "A provision must be asserted as a basis for denying coverage, and
9 during litigation insurers may be precluded from asserting new grounds for denying coverage."
10 *Vision One, LLC v. Philadelphia Indem. Ins. Co.*, 174 Wn. 2d 501, 520, 276 P.3d 300, 309 (2012)
11 (emphasis added). In order to effectuate such an estoppel, "insureds must demonstrate that they
12 either suffered prejudice or the insurer acted in bad faith when the insurer failed to raise all its
13 grounds for denial in its initial denial letter." *Hayden v. Mut. of Enumclaw Ins. Co.*, 141 Wn. 2d
14 55, 63, 1 P.3d 1167, 1171 (finding that a violation of WAC 284-30-380 did not provide an
15 automatic remedy of estoppel because there was no allegation of bad faith or prejudice). Here,
16 Plaintiffs would be prejudiced if MetLife were to raise new coverage arguments that have not
17 already been disclosed. For example, the failure to disclose coverage arguments would prevent
18 Plaintiffs from taking the depositions of witnesses with knowledge of any facts supporting those
19 arguments, and would prevent Plaintiffs from locating case law pertaining to those new coverage
20 arguments.
21 arguments.

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23 Defendant has communicated it does not oppose this motion.
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The Honorable James P. Donohue

UNITED STATES DISTRICT COURT WESTERN DISTRICT OF
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**(PROPOSED) ORDER GRANTING
PLAINTIFFS' MOTIONS IN LIMINE**

This matter came before the Court on Plaintiffs' Motions in Limine. Having reviewed all the briefing and materials submitted for and against Plaintiffs' Motions,

IT IS HEREBY ORDERED that the following Motions in Limine are GRANTED. The Court rules that:

- 1. Evidence and witnesses not disclosed in response to discovery requests, declarations, or depositions shall be excluded.**
- 2. Witnesses not included in the Pretrial Order, with the exception of rebuttal witnesses that could not be anticipated prior to trial, shall be excluded.**

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5 UNITED STATES DISTRICT COURT
6 FOR THE WESTERN DISTRICT OF WASHINGTON
7 AT SEATTLE

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9 Representative of THE ESTATE OF
10 ROSEMARY K. TALADAY, and GARY
11 TALADAY,

12 Plaintiffs,

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15 AND CASUALTY INSURANCE
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17 Defendant.

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CERTIFICATE OF SERVICE

18 Under penalty of perjury under the laws of the State of Washington, I declare that on this
19 23rd day of March, 2016, I electronically filed the foregoing with the Clerk of the Court using the
20 CM/ECF system with which will send notification of such filing to the following:

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Sonia Chakalo